



June 14, 2000

Ms. Carrie Galatas
Conroe Independent School District
702 North Thompson
Conroe, Texas 77301-2557

OR2000-2311

Dear Ms. Galatas:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136121.

The Conroe Independent School District ("CISD") received a request for the following information:

1. The CISD policy on sick leave banks;
2. The CISD definition of catastrophic illness;
3. The names of all employees who have utilized the sick leave bank;
4. The school or department to which the listed employee is assigned.; and
5. The nature of the listed employee's illness.

You have provided for our review information that is responsive to item 1 (exhibit "D"), and samples of information that is responsive to items 3, 4, and 5 (exhibits "B" and "C").¹ You assert that the information in exhibits "B" and "C" is excepted from disclosure under section 552.101 of the Government Code in conjunction with the common law right to

¹In reaching our conclusion here, we assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988); 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

privacy. We have considered the exception you claim and reviewed the submitted information.²

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses the common law right to privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under the common law right to privacy, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). The information at issue includes the names of employees, the campus or department of the employee, and the nature or reason for leave. You acknowledge that this office has found that the disclosure of the identity of a public employee who uses sick leave does not by itself implicate the first prong of the above-stated test for common law privacy. Open Records Decision No. 336 (1982). You argue, however, that the identities should be excepted in this instance because of the “circumstances surrounding an employee requesting a donation of leave days.” Even in such a context, we do not agree that the mere identity of the employee and location where the employee works constitutes information that is “highly intimate and embarrassing” the release of which “would be highly objectionable to a person of ordinary sensibilities.” However, as to the nature or reason for leave, we have marked for redaction much of this information. *See, e.g.*, Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress excepted as common law private), 455 (1987) (information regarding prescription drugs, illnesses, operations, and physical handicaps excepted as common law private). You must withhold the types of information we have marked as common law private.

We also note, however, that the information at issue contains the social security numbers of public employees. Some of the information also indicates whether the employee has family members. It is possible that this information may be confidential under section 552.117 of the Government Code. Section 552.117 of the Government Code excepts from required public disclosure the home addresses, telephone numbers, social security numbers, or information revealing whether a public employee has family members of those public employees who request that this information be kept confidential under section 552.024. *See* Gov’t Code § 552.117. Section 552.117 requires you to withhold the social security number of a current or former employee or official who requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold the information if the request for confidentiality

²You have apparently submitted exhibit “D” solely for informational purposes, and you make no arguments for withholding this information from the requestor. We find exhibit “D” to be responsive to the request. We therefore assume that you have already released this information, as well as any other responsive information, other than the types of information contained in samples “B” and “C.” If you have not already released the other responsive information, you must do so at this time. *See* Gov’t Code § 552.301, .302.

under section 552.024 was made after the request for information at issue was received by CISD. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989). Therefore, if the employee or official has elected to not allow public access to this information in accordance with the procedures of section 552.024 of the Government Code, we believe that CISD must withhold this information from required public disclosure pursuant to section 552.117.

If the employee or official did not make a timely election pursuant to section 552.024 to keep their section 552.117 information confidential, the social security number of the employee or official may nevertheless be confidential under section 552.101 of the Government Code in conjunction with federal law. Section 552.101 encompasses confidentiality provisions such as the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). This provision makes confidential social security numbers and related records that have been obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* In this case, it is not apparent to us that the social security numbers contained in the requested information have been obtained or maintained by CISD pursuant to any provision of law enacted on or after October 1, 1990. Therefore, we have no basis for concluding that the social security numbers at issue are confidential under section 405(c)(2)(C)(viii)(I). We caution you, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Gov't Code § 552.352. Prior to releasing the social security numbers, CISD should ensure that these numbers have not been obtained or maintained by CISD pursuant to any provision of law enacted on or after October 1, 1990. We have marked a sample of the kind of information that must be withheld under section 552.117 or 552.101 if the above-described conditions are met.

In summary, you must withhold the information we have marked as private under common law. You must also withhold the information we have marked as subject to section 552.117 or 552.101, provided the above-described conditions are met. You must release the remaining information that is responsive to the request.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general

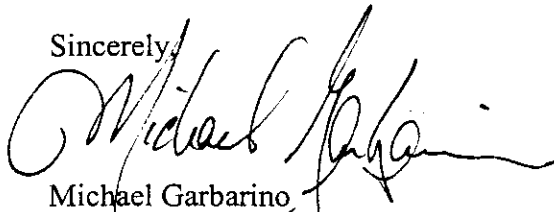
have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/pr

Ref: ID# 136121

Encl. Submitted documents

cc: Ms. Wanda Harris
Texas Federation of Teachers
333 Southwestern Boulevard, Suite 203
Sugar Land, Texas 77478
(w/o enclosures)